

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6427

BILL NUMBER: HB 1099

NOTE PREPARED: Feb 2, 2006

BILL AMENDED: Feb 2, 2006

SUBJECT: Fireworks Sales and Discharge.

FIRST AUTHOR: Rep. Frizzell

FIRST SPONSOR:

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill renames common fireworks as consumer fireworks. It authorizes the use of consumer fireworks on the property of the purchaser, on the property of another who has given permission for the use, and at a special discharge location. This bill allows for permits to be issued for special discharge locations for fireworks and sets conditions and fees for issuance of the permits and requirements for discharge of consumer fireworks at a location. The bill sets requirements for the tent or structure in which consumer fireworks may be sold.

It sets annual registration fees for the retail sale of certain fireworks. The bill removes the requirement that a purchaser of consumer fireworks provide a written assurance that the consumer fireworks will be shipped out of Indiana within five days of purchase.

It makes it a Class A misdemeanor for (1) a person less than 18 years of age to knowingly or intentionally purchase certain consumer fireworks or for a person less than 18 years of age to sell certain fireworks; (2) a seller of consumer fireworks to knowingly or intentionally fail to request photographic identification of a purchaser who appears less than 25 years of age; and (3) a seller of fireworks to knowingly or intentionally fail to record certain information regarding a sale of consumer or special fireworks. It makes it a Class C infraction, or a Class B infraction under certain circumstances, for a person to use consumer fireworks in other than certain locations. It makes it a Class B misdemeanor, a Class A misdemeanor, or a Class D felony to recklessly, knowingly, or intentionally use consumer fireworks under certain circumstances. It makes it a Class D felony for a person to fail to collect or remit the Public Safety Fee.

The bill sets a Public Safety Fee of 4% on the retail sale of consumer fireworks, to be collected by the retail

merchant. It sets requirements for the collection and remission of the public safety fees to the Department of Homeland Security (DHS), and sets provisions for the use of the public safety fees by the DHS. It requires the Fire Prevention and Building Safety Commission to adopt rules concerning fireworks.

The bill requires certain persons that treat a person for an injury that the practitioner or administrator identifies as resulting from fireworks or pyrotechnics to report the injury to the State Department of Health. It provides that the report is confidential.

The bill repeals an expired section of the Indiana Code, and makes conforming amendments and a technical correction.

Effective Date: Upon passage; June 1, 2006.

Explanation of State Expenditures: The Fire Prevention and Building Safety Commission must adopt rules concerning fireworks and the distribution of the Public Safety Fee revenue. The Department of Fire and Building Safety, which staffs the commission, should be able to assist in the adoption of rules by the commission given its existing budget.

The State Fire Marshal or staff member must inspect tents and structures in which common fireworks are sold. The Fire Marshal is no longer required to provide signs to interstate wholesalers. The Fire Marshal should be able to accomplish the inspections given the existing level of resources.

Public Safety Fee: Revenue from the fee may be used to provide funds for disaster relief and training programs.

Penalty Provisions: A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$62,292. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

(Revised) *State Department of Health:* Under current law, the State Data Center of the State Department of Health received information from practitioners concerning injuries identified as resulting from fireworks or pyrotechnics. The State Department of Health was required to provide a report to the General Assembly not later than December 31, 2004. This section, IC 35-47-7-6, expired on January 1, 2005.

Under the bill, this expired section would be repealed and the State Department of Health would be required to report annually on information collected in writing from practitioners, hospitals, and outpatient surgical centers. Administrative costs to collect data and produce a report will become annual costs under the bill and could increase over the previously provided report to the extent that hospitals and outpatient surgical centers are added. However, any increase in cost is expected to be minimal and will depend on the administrative actions of the State Department of Health.

Explanation of State Revenues: (Revised) *Registration Fee:* The bill sets an annual registration fee of \$1,000 for the first location, \$200 for each additional sales location in a structure, and \$500 for each additional sales location in a tent from which consumer fireworks are offered for sale. The amount of revenue that will be

generated by the provision is indeterminable. Fees collected must be deposited in the Fire and Building Services Fund.

Public Safety Fee: A user fee is imposed upon the sale of consumer fireworks. The fee is paid to the retailer who pays the fee to the DHS. The fee is measured by the gross retail income received by a retailer in a retail unitary transaction of consumer fireworks and is imposed at the following rates:

Public Safety Fee	Gross Retail Income from the Retail Unitary Transaction
\$0.00	Less than \$0.25
\$0.01	At least \$0.25 but less than \$0.50
\$0.02	At least \$0.50 but less than \$0.75
\$0.03	At least \$0.75 but less than \$1.00
\$0.04	At least \$1.00

Retailers must file returns with the DHS. The amount of revenue that will be collected from this fee is currently indeterminable.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$70 or \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class B infraction is \$1,000 and the maximum judgment for a Class C infraction is \$500, both of which are deposited in the state General Fund.

Explanation of Local Expenditures: *Penalty Provisions:* A Class A misdemeanor is punishable by up to one year in jail. A Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) An individual must apply to the chief of a municipality's or a township's fire department for a permit to sponsor a special discharge location in the municipality or the township. The bill sets a permit fee of \$5,000 for the first special discharge location, and a fee of \$1,000 for each additional location. Permit fees will be paid to the municipality or the township in which the special discharge location will be located. The amount of revenue that will be generated by the bill is indeterminable.

Penalty Provisions: If additional court actions occur and a guilty verdict is entered, local governments would

receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 or \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Department of Fire and Building Safety; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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